IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

Crl.Rev.Pet.No. 1033 of 1999()

CC.123/1997 of JUDL.MAGISTRATE OF FIRST CLASS-II, THAMARASSERY
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REVN. PETITIONER:

V.S. JOY, S/O.SCARIA (LATE)
VARIKKAMAKKAL HOUSE,
KUPPAYAKKODU AMSOM
ENGAPUZHA DESOM OF
KOZHIKODE DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENT: ACCUSED/ COMPLAINANT
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1. BONS JOH, S/O. JOHN,
KIZHAKKEDATH HOUSE, KODENCHERRY AMSOM
AND DESOM OF KOZHIKODE DISTRICT.

2. CIRCLE INSPECTOR OF POLICE
REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT
ERNAKULAM.

BY ADV. SRI.P.J.MATHEW
PUBLIC PROSECUTOR SRI.C.K.SURESH
SRI.T.G.RAJENDRAN
SMT.S.ANITHA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/06/2007, THE COURT ON 27/07/2007 PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.R.P.NO. 1033 OF 1999

DATED THIS THE 27th July 2007

ORDER

The revision petitioner is the father of the deceased Aju Joy with respect to which incident the first respondent was tried in the Court of J.F.C.M.II, Thamarassery in C.C.No. 123/1997 for the offences under Sections 279 and 304 A I.P.C. The finding of the court below adjudging the accused was not guilty is sought to be disputed herein.

2. The prosecution case is that on 30-4-1996 at about 24.35 hours the accused drove KL-10/B-3575 jeep through Vennappara-Kuppayathodu road from north to south in a rash and negligent manner so as to endanger human life and collided against a scooter bearing Registration No. KL-11/A-7559 that was driven by the deceased who succumbed to the injuries sustained on 4-5-1996 at the Medical College Hospital, Kozhikode.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 14 and Exts.P1 to P10. Of the prosecution witnesses examined, PWs.2 to 4, the occurrence witnesses turned hostile. PWs. 5 and 6 have supported the prosecution version. PW6 is a close relative of the deceased.

4. The ground on which the court below acquitted the accused is on account of the fact that the evidence adduced indicated that the jeep was proceeding from southern side to the northern side whereas the prosecution case is that the jeep was proceeding towards the southern direction. The scene of occurrence as per Ext.P3 scene mahazar is 2.28 metres towards the west from the eastern tar end. The road was having a width of 3.76 metres. Hence, as per the prosecution version the jeep was proceeding from the northern side to the southern side and hence the spot at which the collision took place is clearly on the wrong side. It was the case of the accused that in the final report it has been alleged that the jeep was proceeding from north to the southern direction which is totally against the case as unfolded from the version of the witnesses. On investigation, the occurrence witnesses have all stated that the jeep was proceeding from the south to the north in which case the scene of occurrence would be clearly on the correct side of the jeep and the scooterist was clearly on the wrong side. It was in the above circumstances that the court below has found that the prosecution version is contrary to the case set up by the prosecution witnesses.

I find that the trial court has considered in detail the evidence adduced in the matter. It is seen that all the witnesses including those who supported the prosecution has stated that the jeep was proceeding towards the northern direction. The court below has noted that the above aspect is further fortified from the fact that the scooter was found lying on the eastern side of the road margin and the dent and scratches found on the jeep is on the right middle portion of the jeep. Evidently the accused is entitled for benefit of doubt. In the circumstances, I find no reason to interfere in the findings of the court below in exercise of the revisional jurisdiction. The Crl. revision petition is dismissed.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.R.P.NO. 1033 OF 1999
ORDER

27-=7-2007